SUPREME COURT OF SEYCHELLES

Reportable
[2024]
MA 278/2023
Arising in CS 79/2020

In the matter between:

THE ATTORNEY GENERAL **Applicant**
(rep. by Mr. Frank Ally, Attorney General)

and

THE ESTATE OF THE LATE ANDRE DELHOMME **Respondent**
(Mr. Frank Elizabeth)

Neutral Citation: *The Attorney General v Delhomme* (MA 278/2023) [2024] (26 April 2024).
Before: Carolus J
Summary: Application for permission to make further submissions
Delivered: 26 April 2024

ORDER

The application to file further submissions is granted.

RULING

Carolus J

Background

[1] The matter in CS 79/2020 (the principal suit) was heard in the Supreme Court both on the merits and on a plea of prescription raised in *limine litis*. The suit was dismissed by the Supreme Court solely on the plea in *limine litis* without making a determination of the case of the merits: it found that the action was prescribed, having been filed more than 20 years after the accrual of the cause of action (*Estate of the late Andre Delhomme & Ors v AG* (CS79/2020) [2021] SCSC 227 (18 May 2021)) On appeal, by judgment dated 26th April

2023 (*The Estate of the late Andre Delhomme & Ors v The Attorney General* (SCA 15/2021) [2023] SCCA 16 (26 April 2023)), the Court of Appeal set aside the decision of the Supreme Court and remitted the matter to the Supreme Court to be determined on the merits.

The Motion

[2] This Court now has to make a determination of the Notice of Motion MA 278/2023 made by the Attorney General *"for an order, pursuant to section 121 of the Seychelles Code of Civil Procedure, that the parties be permitted to make further submissions in Civil Side 79 of 2020 ("the Suit"), whether in written or oral form, prior to the Court giving its Judgment in remitted proceedings in the suit".*

[3] The reasons for the learned Attorney General's motion and the orders he seeks are stated in his supporting affidavit, the relevant part of which reads as follows:

> *7. Having considered the proceedings from the Court of Appeal together with the proceedings of the most recent mention before this Court on 21 June 2023, I understand that the Respondent, in the course of his oral submissions in the Court of Appeal, withdrew the first prayer as contained in its plaint. A copy of the Supreme Court proceedings of 21st June 2023 is shown to me produced and exhibited herewith.*
>
> *8. According to the Plaint filed by the Respondent in the Suit, the Respondent prayed as follows:-*
>
> *8.1 declare that the contract of sale has become frustrated, null and void by reason of the Defendant 's failure to pay the Plaintiff the balance of the purchase price in the sum of SCR 1,500,000;*
>
> *8.2 make an order or (sic) rescission of the contract of sale, cancelling the registration of the island of COETIVY in the name of the Government of Seychelles and ordering the Registrar of Lands, to rectify the Land Register by cancelling, deleting and replacing, the name of the Government of Seychelles as the registered owner of the said island and replacing it with the name of the Plaintiff*
>
> *FURTHER AND IN THE ALTERNATIVE*

8.3 Order the Defendant to pay the Plaintiff the sum of SCR 1,500,000 together with interest at the commercial rate of 12% from the date of the said contract of sale, 13th December 1979, until the date of judgment.

8.4 Make any further or other order the Court deems fit.

9. I aver that the prayer that the Respondent sought to withdraw or withdrew is the prayer set out in subparagraph 8.1 above.

10. In the light of the decision of the Seychelles Court of Appeal and the withdrawal of a prayer from the Plaint, I aver that it is just and necessary, prior to the Learned Judge handing down her Judgement in the remitted proceedings, for the parties to make further submissions before this Court.

11. I am, therefore, by way of this application seeking an order from the Court that the parties be given the opportunity to make further submissions, whether in writing or orally at a short hearing.

12. I do not consider that the application will prejudice the Respondent in any way; in fact, the application will provide both parties with an equal and symmetrical opportunity to address the Learned Judge and set out their respective positions in relation to the remitted proceedings, particularly in circumstances where the action before the Supreme Court has, in effect, been amended by way of the Respondent's decision in the Court of Appeal to withdraw the first prayer as contained in the plaint.

[4] Exhibited to the affidavit are the proceedings of 21st June 2023 in CS 79/2020 before the Supreme Court after the matter was remitted to that Court by the Court of Appeal. The last part of page 3 of the proceedings reads as follows:

Mr. Elizabeth: My Lady before we do that, I do not know if my Ladyship is aware that I withdrew in the Court of Appeal my first prayer, which is not now relevant for your Ladyship to deal with in your Judgment because it has been withdrawn. The first prayer was to declare the agreement null and void. In the Court of Appeal, I was advised to withdraw this and I did withdraw at the Court of Appeal.

Court: Before the Court of Appeal.

Mr. Elizabeth: 1st prayer was withdrawn before the Court of Appeal. So the only prayer are rescission, revision of the contract of sale and to return of the property back to the estate.

[5] The respondent has filed written objections to the motion in which he has raised a plea in *limine litis,* and also dealt with the matter on the merits in an *"Affidavit-in-Reply"* sworn by Alain Hoareau in his capacity as representative of the respondent, by virtue of a power of attorney dated 2nd March 2020.

[6] The plea in *limine litis* is essentially that section 121 of the Seychelles Code of Civil Procedure ('SCCP") under which the present motion is made, does not apply to circumstances where the parties have closed their respective cases and judgment is pending. The respondent avers that section 121 provides for incidental demands made in the course of a suit, and argues that *"since both parties have closed their respective cases and the Court has given its final judgment, which was the subject of an appeal, the matter is no longer "in the course of such suit" as envisaged by section 121 of the [SCCP]".*

[7] On the merits of the motion, Mr Hoareau avers in his affidavit that:

5. *In respect to paragraph 10, I say that the Court of Appeal has made an order that the Supreme Court proceed to judgment in the case, and it is not necessary for the parties to make any other additional submissions before the court as this will be contrary to what the Court of Appeal has ordered. I say that I am advised by my attorney, Mr Frank Elizabeth that the case has been fixed for judgment on the 29th of September at 2pm and that the court should proceed with haste to deliver its judgment in compliance with the Court of Appeal judgment...*

6. *In response to paragraph 11, I humbly pray this Honourable Court to dismiss the application, as it seeks to have a second bite at the cherry by seeking an order for leave to be granted to file additional submission when both the applicant and the respondent had already filed their final submissions and the matter is now ripe for judgment. I aver that the court should not, under any circumstances, entertain this application as such an order is utterly unnecessary, it would create inordinate delay, it would be grossly unjust, unfair, and contrary to the judgment of the Court of Appeal.*

7. *In response to paragraph 12, I say that this application ought to have been made in the Court of Appeal at the time that the amendment was sought and granted and the court cannot give the applicant an opportunity to add, correct or otherwise embellish its submissions which it has filed already on the pretext of an amendment sought and granted in the Court of Appeal and which has no consequential bearing or effect on the parties final submissions already filed before this Honourable Court. I am advised by my attorney, Frank Elizabeth, that the amendment that was sought and granted in the Court of Appeal has no bearing on the proceedings before the Supreme Court. I am further advised by my attorney, Frank Elizabeth, that it would in fact caused the respondent severe prejudice if the court was to allow this motion to make additional submissions when both parties have closed their respective cases, the Court has given its final judgment and the Court of Appeal has clearly directed the Supreme Court to proceed on the merits of the case; meaning proceed to judgment on the merits and disregarding the point of law raised by the applicant which stands dismissed.*

[8] Both parties have filed written submissions which will be referred to as appropriate in the analysis below.

Analysis

Plea in Limine Litis

[9] The plea in *limine litis* raised by the respondent will be dealt with first. It is as follows:

> *1. The application is bad in law and ought to be dismissed with costs as section 121 of the Seychelles Code of Civil Procedure applies only to circumstances where both parties have not closed their respective case and final judgment not delivered. The respondent submits that this is not the case here since this provision of law makes reference to "...incidental demands..." that can be made "...in the course of such suit..." only.*
>
> *2. The Respondent submits that since both parties have closed their respective cases and the Court has given its final Judgment which was the subject of an appeal, the matter is no longer " in the course of such suit" as envisaged by Section 121 of the Seychelles Code of Civil Procedure. The application is therefore frivolous and vexatious in law and ought to be dismissed with costs.*

[10] Section 121 of the SCCP pursuant to which the present application is made provides as follows:

121. Either party to a suit may, in the course of such suit, apply to the court by way of motion to make an incidental demand. Underlining is mine.

[11] In light of the plea in *limine litis* of the respondent the question arising for determination by this Court is whether the motion has been made *"in the course of [the principal] suit"*. The respondent submits that it is not, since both parties have closed their respective cases and the Supreme Court has given its judgment in the matter which has been subject to an appeal.

[12] The learned Attorney General, on the other hand, submits that until judgment is delivered the suit has not been concluded, and as such, at any time prior to the delivery of judgment a party may apply to the court to make submissions on any point that may have arisen, or the Court may in exercise of its inherent power call upon the parties to submit on any such issue and on which submissions are required by the trial judge.

[13] In support of his argument he relies on section 135 of the SCCP which deals with *"Delivery of Judgment"* and which provides as follows:

> *135. (1) At the conclusion of the hearing of the suit, the court shall deliver judgment at once or on some future day of which notice shall be given at the conclusion of the hearing to the parties or their attorneys or agents(if any).*
>
> *(2) Where on the day fixed for delivery of judgment, the court is not prepared to deliver judgment, a yet future day may be appointed and announced for the delivery of judgment.*
>
> *(3) The judgment shall be dated and signed by the judge in open court at the time of delivering it.*

[14] He argues that the words *"the hearing of the suit"* in subsection (1) of that section means *"the adducing of evidence upon which a court will make its decision"* and that when this is concluded and the judgment is pending it is still *"in the course of the suit"*. The suit will only be concluded upon delivery of the judgement when the trial judge becomes *functus officio*. He reiterates that as such, where a trial judge requires the parties to submit on any matter that has arisen, he or she may do so. He submits that in the present case despite judgment having been delivered on 18th May 2021, that judgment was set aside by the

Court of Appeal which ordered delivery of another judgment on the merits and therefore the proceedings have not yet been concluded.

[15] The learned Attorney General submitted that the same reasoning has been applied to the amendment of pleadings under section 146 of the SCCP which can be applied for and granted at any stage of the proceedings that is, up to delivery of judgment. He relied on the cases of *Casamar (Seychelles) Limited v The Owners of the Ship "Aristotle"* (CS 341/1996) [2002] (25 July 2002) and *Morin v Pool* (CS 259/1999) [2002] SCSC 3 (13 March 2002) in that regard, neither of which I have found very helpful. *Morin* focused on the condition provided for in section 146 of the SCCP that no amendment which seeks to *"convert a suit of one character into a suit of another and substantially different character should be allowed"*. The court allowed the proposed amendment of the plaint on the basis that it did not have the effect of adding a separate cause of action. Moreover section 146 allows amendment of pleadings *"at any stage of the proceedings"*, and it does not appear that the hearing of that case on the merits had been concluded when the amendment was sought. In *Casamar* the application for amendment of the statement of claim was made after the plaintiff started adducing evidence but before it closed its case. The Court in that case laid emphasis on the principle that: *"... amendments ought to be made for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings"* and allowed the proposed amendment on the basis that it was *"necessary for the purpose of determining once and for all the real question in controversy between the parties in this matter"*.

[16] None of the authorities relied upon by either counsel have succeeded in shedding any light on whether or not the stage in a case at which all the evidence has been adduced and both parties have closed their cases and judgment is pending, may be considered in the words of section 121 of the SCCP, *"in the course of such suit"*. However, in section 135 of the SCCP a distinction is made between *"[the conclusion of] the hearing of the suit"* and *"the delivery of judgment"* all of which are different stages that a suit must go through. Logically speaking, it would appear that the suit cannot be concluded until delivery of judgment, which effectively disposes of the matter between the parties marking the end of the

adjudication process. I therefore agree with the learned Attorney General that until the delivery of judgment, a motion filed would still be in the course of the suit.

[17] Now in the present case the course of events was as follows: hearing, filing of written submissions, judgment of Supreme Court, Appeal, decision of Court of Appeal (1) quashing the decision of the Supreme Court judgment; (2) dismissing the plea in limine litis; (3) remitting the case to the Supreme Court for judgment on the merits. Given the decision of the Court of Appeal, the position is the same as if the matter had been heard, written submissions filed and judgment pending before the Supreme Court. It is as if no judgment had been given by the Supreme Court as its first judgment was dismissed and we therefore still find ourselves in the course of the suit. It was therefore perfectly in order for the learned Attorney General to file the motion for leave to make additional submissions under section 121 of the SCCP, which the Court has to consider and may allow if found to be meritorious. Furthermore no question of *functus officio* as raised by counsel for the respondent arises in the circumstances as there is no judgment of the Supreme Court as it was quashed by the Court of Appeal.

[18] This Court also agrees with the Learned Attorney General's submission that the Court may where hearing of a case has been concluded and before judgment is delivered, in the exercise of its inherent jurisdiction, request submissions where none has been made or even where submissions have been made request further submissions, if the Court considers it necessary. As submitted by the learned Attorney General this would not be contrary to any rule of practice or procedure of the Supreme Court.

The respondent has also submitted that it would be contrary to the Court of Appeal's judgment to entertain or grant the motion, as the Court of Appeal specifically directed that the matter be remitted to the Supreme Court *"for the learned Judge to deal with the matter on the merits only"*. I find no merit in this argument. In my view this order of the Court of Appeal does not preclude this Court from granting the motion, or requesting further submissions itself.

[19] With that said, we move on to the merits of the motion.

On the Merits of the Motion

[20] In light of the pleadings, supporting affidavits and submissions, I find it necessary at the outset to set out the proceedings as they took place before the Supreme Court. After close of pleadings the matter was fixed for hearing which took place on 6th November 2020. At the hearing Mr Allen Joseph Hoareau and Mr Patrick Lablache testified on behalf of the plaintiff and the defendant respectively. Counsels for both parties then filed written submissions both on the plea of prescription raised by the defendant and on the merits. Counsel for the plaintiff also filed a second set of submissions one day prior to the date fixed for judgment, which was delivered on 18th May 2021.

[21] The basis of the learned Attorney General's motion to be permitted to make further submissions, as it appears in his affidavit in support of his Notice of Motion, is two-fold: his motion is based on (1) *"the decision of the Seychelles Court of Appeal"* and (2) *"the withdrawal of a prayer from the plaint"* (see paragraph 10 of his affidavit).

[22] Insofar as it concerns the first point namely the Court of Appeal's decision, the learned Attorney General submits that;

> 9. *... the Court of Appeal ... set aside the judgment of the Learned Trial Judge* ***on the basis of the wrongful application of time limit for extinctive prescription****. In the Applicant's pleadings, the Applicant had pleaded and in the course of the hearing had adduced and submitted on extinctive prescription and as such the Learned Trial Judge* ***despite the decision of the Court of Appeal setting aside the Judgment on grounds of prescription will have to give consideration to extinctive prescription as per the statutory time limit for such in her Judgment****. As such, it is important that the parties should be given the opportunity to make further submissions on the plea of prescription that was raised and which according to the Applicant is still in issue and will have to be determined by the Learned Trial Judge. [...]*
>
> 10. *As stated above, this is a case where upon the closing addresses of both parties, the Learned Trial Judge in her Judgment dismissed the Respondent's case on a point of law more particularly on extinctive prescription of 20 years instead of extinctive prescription of 5 years. Upon the appeal of the Respondent against the Judgment to the Court of Appeal,* ***the Court of Appeal allowed the appeal on the basis that***

***the prescription of 20 years did not apply in such case**, which prescription period applies to acquisitive prescription.*
[...]

11. As such the issue of extinctive prescription remains a live issue that the Learned trial Judge will have to consider in giving judgment on the merit.
Emphasis added.

[23] In my view such submission is misconceived. The Court of Appeal never pronounced itself on the correctness or otherwise of the Supreme Court's determination of the prescription period of 20 years being the applicable prescription period. To my understanding the Court of Appeal determined the point of *"whether or not the learned Judge was correct in law to raise ex proprio motu the twenty-year extinctive prescription"*, which it identified as *"the question at issue" (paras 38 and 41).* The Court of Appeal, having stated at para 46 of its judgment that in the proceedings before the Supreme Court the respondent in the appeal/defendant in the plaint *"pleaded that the five-year extinctive prescription under Article 2271 of the Civil Code of Seychelles applies to the Appellant's action; and that the learned Judge concluded that the twenty-year prescription applies to the Appellant's action"*, went on to state the following:

47. Counsel for the Appellant relied on Articles 2223 and 2224 of the Civil Code of Seychelles and the cases of PTD Limited v Keven Zialor Civil Appeal SCA 32/2017 (17 December 2019) and Prosper & Another v Fred (SCA 35/2016) [2018] SCCA 41 (14 December 2018), in support of his submission that the learned Judge erred in law in relying on the extinctive prescription of twenty years which concerned real actions to dismiss the Appellant's action, when the Respondent has pleaded that the Appellant's action (a personal action) was barred by extinctive prescription of five years.
[...]

*49. Articles 2223 and 2224 under **"TITLE XX PRESCRIPTION CHAPTER 1 GENERAL PROVISIONS"** of the Civil Code of Seychelles stipulate —*

"Article 2223

The Court cannot, on its own, take judicial notice of prescription in respect of a claim.

Article 2224

***A right of prescription may be pleaded at all stages of legal proceedings**, even on appeal, unless the party who has not pleaded it can be presumed to have waived it." (Emphasis supplied)*

50. *Article 2223 of the French "Code Civil" stipulates — "**Art.** 2223. [l]es juges ne peuvent pas suppléer d'office le moyen résultant de la prescription.", **CODES DALLOZ CODE CIVIL quatre-vingt-douzième édition**, page 1646. Article 2223 of the Civil Code of Seychelles is similar to Article 2223 of the French "Code Civil".*

51. *In **PTD Limited** [supra], Counsel for the appellant argued inter alia that the learned Judge erred in law in granting the respondent a "droit de superficie" by way of acquisitive prescription of ten years. In this respect, he contended that there were no pleadings to the effect that the appellant had acquired a "droit de superficie" by way of acquisitive prescription of ten years, for value and in good faith. Counsel for the appellant contended that, under the Civil Code of Seychelles, prescription must be pleaded for a court to rely on it because "la prescription n'opère pas de plein droit." In support of his submissions, Counsel for the appellant relied on Articles 2223 and 2224 of the Civil Code of Seychelles, the case of **Prosper & Another** [supra], and the following extracts from **Dalloz Encyclopédie de Droit Civil 2e Ed. Verbo Prescription Civile**, at notes 332, 333, and 334 —*

"Art. 2. — CONDITIONS POUR QUE LA PRESCRIPTIONS PRODUISE SES EFFETS.

§ 1er. — Nécessité d'invoquer la prescription

332. La prescription n'opère pas de plein droit et l'article 2223 du code civil interdit aux juges, d'une manière absolue, de suppléer le moyen resultant de la prescription. La règle est gènérale et s'applique, quelle que soit le délai (Civ. 31 Mai 1847, D. P. 47. 4. 379; 2janv. 1855, D. P. 55. 1. 13 ; 26 FEVR. 1861, d. p. 55. 1. 13; [...];

333. Le juge ne peut même pas suppléer d'office une prescription plus courte qui serait acquise, alors que la partie ne se prévaut que d'une prescription plus longue qui n'est pas encore accomplie [...];

334. La règle selon laquelle le juge ne peut pas suppléer d'office le moyen resultant de la prescription s'applique d'ailleurs en toute matière et même lorsqu'il s'agit de courtes prescriptions".

*52. The case of **Prosper & Another** [supra] held that — "[...] generally prescription must be pleaded and cannot be raised by the court itself (see Article 2223 of the Civil Code [...]."*

*53. In **PTD Limited** [supra], Counsel for the respondent, while admitting that the respondent did not make such a plea, contended that the respondent had to establish that he acquired the "droit de superficie" by prescription; and that if the learned Judge were to find that the facts supported the "droit de superficie", he could have declared that the respondent had established that right over the property.*

54. In PTD Limited [supra], the Court of Appeal accepted the submissions offered on behalf of the appellant, based on which it concluded that prescription must be pleaded; and that a court cannot take judicial notice of prescription in respect of a claim.

[24] Having considered Articles 2223 and 2224 of the Civil Code of Seychelles Act, Article 2223 of the French Code Civil, the cases of *PTD Limited v Keven Zialor* and *Prosper & Another v Fred* and the aforementioned extracts from Dalloz, the Court of Appeal stated as follows:

*55. We endorsed the findings of the Court of Appeal in **PTD Limited** [supra] with respect to the question at issue. Note 332 from **Dalloz Encyclopédie de Droit Civil 2e Ed. Verbo Prescription Civile** states that, "[l]a prescription n'opère pas de plein droit et **l'article 2223 du code civil interdit aux juges, d'une manière absolue, de suppléer le moyen resultant de la prescription. La règle est gènérale et s'applique, quelle que soit le délai** [...]." [Emphasis supplied]*

And found that:

56. In light of the above, we accept the submissions of Counsel for the Appellant made on the point at issue and hold that the learned Judge was wrong to take judicial notice of the twenty-year extinctive prescription, which had not been pleaded to dismiss the Appellant's action in limine litis. We also accept the submission of Counsel for the Appellant, that having found that the five-year extinctive

prescription did not apply to the Appellant's action, the learned Judge should have dismissed the plea in limine litis.

57. It follows, therefore, that the question of whether or not the learned Judge was correct to conclude in her judgment that the Appellant's action is "une action réelle"/ a real action and not "un action personelle"/ a personal action and whether or not the action is time-barred, does not arise for consideration. This judgment does not express any views on the correctness of the learned Judge's conclusions.

[25] The ensuing decision of the Court of Appeal at paragraphs [58] to [61] of its judgment is reproduced below:

58. For the reasons stated above, the appeal is allowed on the amended ground 16. We find the contentions contained in grounds one to fifteen of the grounds of appeal to be misconceived in view of the conclusion we have arrived at in this case, Hence, grounds one to fifteen stand dismissed.

59. Hence, we quash the decision of the learned Judge dismissing the Appellant's action in limine litis on the ground that the action is prescribed having been filed more than twenty years after the accrual of the cause of action. For the order of the learned Judge, we substitute therefor an order dismissing the plea in limine litis.

60. We remit the case to the Supreme Court for the learned Judge to deal with the action on the merits only.

61. With no order as to costs.

[26] It is clear from the parts of the judgment of the Court of Appeal reproduced above, in particular paragraph 57 thereof, that the Court of Appeal did not express any views on firstly the correctness of the Supreme Court's finding that the defendant/appellant's action is "une action réelle"/ a real action and not "un action personelle"/ a personal action and that therefore the 20 year prescription period was applicable, and secondly whether or not the action is time-barred. According to it, these matters did not arise for consideration, as the 20 year extinctive prescription was not pleaded and the Supreme Court was therefore wrong to take judicial notice of the same to dismiss the defendant/ appellant's action in *limine litis*. It held that having found that the five-year extinctive prescription pleaded did

not apply to the Appellant's action, the learned Judge should have dismissed the plea in *limine litis*. Furthermore at paragraph 59, it quashed the Supreme Court's decision dismissing the appellant's plea in *limine litis* on the ground that the action was prescribed having been filed more than twenty years after the accrual of the cause of action, and substituted the Supreme Court's order with an order dismissing the plea in *limine litis*.

[27] I therefore find no merit in the applicant's submissions that it should be permitted to make further submissions on the basis that the plea of prescription raised by the applicant is still a live issue and has to be determined by the trial Judge in the Supreme Court. The decision of the Court of Appeal is clear and unequivocal not only that it had dismissed the plea in *limine litis* of prescription, but also that the case is remitted to the Supreme Court for it "*to deal with the action on the merits only*".

[28] The second reason set forth by the learned Attorney General's in support of his motion to be permitted to make further submissions is the withdrawal of a prayer from the plaint. The cause of action as per the plaint arises from the alleged breach of an agreement entered into between the respondent/plaintiff and the applicant/defendant for the sale of Coetivy Island from the former to the latter for a consideration of SCR 4 million. The alleged breach is the non-payment of the balance of SCR1,500,000 of the purchase price by the applicant/defendant. The final parts of the plaint read as follows:

> *12. By reason of the matters aforesaid, the Plaintiff avers that the agreement of sale has become frustrated, null and void.*
>
> *WHEREFORE, the Plaintiff prays this Honourable Court to make the following orders:*
>
> *1. Declare that the contract of sale has become frustrated, null and void by reason of the Defendant 's failure to pay the Plaintiff the balance of the purchase price in the sum of SCR 1,150,000;*
>
> *2. Make an order of rescission of the contract of sale, cancelling the registration of the island of COETIVY in the name of the Government of Seychelles and ordering the Registrar of Lands, to rectify the Land Register by cancelling, deleting and replacing, the name of the Government of Seychelles as the registered owner of the said island and replacing it with the name of the Plaintiff*

FURTHER AND IN THE ALTERNATIVE

3. Order the Defendant to pay the Plaintiff the sum of SCR1,500,000 together with interest at the commercial rate of 12% from the date of the said contract of sale, 13th December 1979, until the date of judgment.

4. Make any further or other order the Court deems fit.

[29] It is the first prayer for a declaration that the contract of sale has become frustrated, null and void, which was withdrawn by the Plaintiff during the proceedings before the Court of Appeal. As such, even if the plaintiff has not stated as much to this Court, it is presumed that paragraph 12 of the plaint (reproduced at paragraph [17] above) in which it is averred that the agreement of sale become frustrated, null and void, is also withdrawn. The remaining prayers are for the rescission of the contract of sale and cancellation of the registration of the island in the applicant/defendant's name and registering it in the respondent/plaintiff's name; and in the alternative payment of the outstanding balance of SCR1,500,000 by the applicant/defendant to the respondent/plaintiff with interest.

[30] In his submissions the learned Attorney General submits that:

11. As stated above, this is a case where upon the closing addresses of both parties, the Learned Trial Judge in her Judgment dismissed the Respondent's case on a point of law more particularly on extinctive prescription of 20 years instead of extinctive prescription of 5 years. Upon the appeal of the Respondent against the Judgment to the Court of Appeal, the Court of Appeal allowed the appeal on the basis that the prescription of 20 years did not apply in such case, which prescription period applies to acquisitive prescription.

12. ***Furthermore, in the course of his oral submissions in the Court of Appeal, withdrew the first prayer as contained in its Plaint.***

13. ***As such, the issue of extinctive prescription remains a live issue that the Learned trial Judge will have to consider in giving judgment on the merit.***

And further at paragraphs 19 and 20:

19. In light of the circumstances of the case and the grounds upon which the Court of Appeal set aside the Judgment of the Learned Trial Judge, the Learned Trial Judge

may exercise the inherent powers of the Supreme Court and order that the parties make submission to the Court ***on the issues that have arisen from the Judgment of the Court of Appeal and which are live issues that the Learned Trial Judge would have to give consideration to in her Judgment more specifically the issue of extinctive prescription and the amendment of the Respondent's Plaint.***

20. *... In any event the Learned Trial Judge may in light of the Judgment of the Court of Appeal* ***and the Applicant's pleadings (which leave the issue of extinctive prescription for determination according to its statutory time limit)*** *grant the parties the opportunity to address the court.*
Emphasis added

[31] It would seem from the above submissions that it is the grounds on which the Court of Appeal set aside the Supreme Court judgment, together with the withdrawal of the first prayer in the plaint, which makes the issue of extinctive prescription a live issue in the present proceedings before this Court, which it is submitted necessitates further submissions by the applicant/defendant. I do not follow this argument in light of the Court of Appeal's order dismissing the plea in *limine litis* of prescription and its further order remitting the case back to the Supreme Court to be dealt with on the merits only.

[32] Insofar as the withdrawal of the first prayer in the plaint is concerned, I fail to understand how this could have any bearing, on the issue of extinctive prescription. Furthermore the issue of rescission in the second prayer has always featured in the plaint and the applicant/defendant had the opportunity of addressing the same in his submissions.

[33] I am inclined to agree with counsel for the respondent/plaintiff that the applicant/defendant having failed to address pertinent issues in his submissions the first time round is now seeking to *"have a second bite of the cherry"*. I note in particular that the submissions of the applicant/defendant are very scant insofar as it concerns the law and relevant case law on the merits.

[34] Nevertheless, as stated, the Court has a discretion although submissions had been filed previously, to request additional submissions in order to assist it in coming to a decision which is in accordance with the law and does justice to the parties. Such additional

submissions can only benefit the parties, and I fail to see how it can cause prejudice to the respondent/ plaintiff who will also be given an opportunity to make further submissions.

Decision

[35] For the above reasons, I allow the motion to file further submissions insofar as it concerns relevant issues. In that regard I note that neither party has addressed the issue of the burden of proof in the light of Article 1315, in much depth. The parties should also take note that such further submissions should not address the plea of prescription which is no longer a live issue. Counsel for the respondent/plaintiff should further take note that it is not sufficient to provide a list of authorities without showing their relevance to the case in hand in the submissions.

Signed, dated and delivered at Ile du Port on 26 April 2024.

Carolus.

Carolus J